

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

MARTRICE SMITH	§	
VS.	§	CIVIL ACTION NO. 6:21cv071
UNITED STATES OF AMERICA	§	

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Petitioner Martrice Smith, a former prisoner confined within the Bureau of Prisons (BOP), proceeding *pro se*, filed this habeas action. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for the disposition of the petition.

On February 9, 2024, Judge Mitchell issued a Report recommending that Petitioner's petition be dismissed without prejudice for Petitioner's failure to prosecute his case. Docket No. 7. She further recommended that Petitioner be denied a certificate of appealability *sua sponte*. The docket reflects that the mailed report was returned as "undeliverable," with a notation of "RTS." Docket No. 8. To date, Petitioner has not filed objections.

The Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other*

grounds by statute, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten days to fourteen days).


Here, Petitioner has not filed objections. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews her legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.>").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 7) as the findings of this Court. Therefore, it is

ORDERED that this cause of action is **DISMISSED** without prejudice. Petitioner is further **DENIED** a certificate of appealability *sua sponte*, which refers to this case only and does not prevent refiling. Finally, it is

ORDERED that any and all motions pending in this civil action are hereby **DENIED** as moot.

So **ORDERED** and **SIGNED** this **7th** day of **March, 2024**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE